



1 ENERGY AND ENVIRONMENT CABINET

2 Department for Natural Resources

3 Division of Mine Reclamation and Enforcement

4 (Amendment)

5 405 KAR 16:210. Postmining land use capability.

6 RELATES TO: KRS 350.093, 350.095, 350.100, 350.405, 350.410, 350.450, 350.465, 30
7 C.F.R. Parts 730-733, 735, 816.133, 917, 30 U.S.C. 1253, 1255, 1265

8 STATUTORY AUTHORITY: KRS Chapter 13A, 350.020, 350.028, 350.465, 30 C.F.R.
9 Parts 730-733, 735, 816.133, 917, 30 U.S.C. 1253, 1255, 1265

10 NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.465 [~~KRS Chapter 350 in~~
11 ~~pertinent part~~] requires the cabinet to promulgate [~~rules and~~] administrative regulations
12 establishing performance standards for protection of people and property, land, water and other
13 natural resources, and aesthetic values, during surface mining activities and for restoration and
14 reclamation of surface areas affected by mining activities. This administrative regulation sets forth
15 requirements for restoring land use capability after completion of surface mining activities, and
16 specific criteria for approval of postmining land uses which differ from the premining land use.

17 Section 1. General. (1) Prior to the final release of performance bond, affected areas shall
18 be restored in a timely manner:

19 (a) To conditions capable of supporting the uses which the areas were capable of supporting
20 before any mining; or

(b) To conditions capable of supporting higher or better alternative uses as approved by the cabinet under Section 4 of this administrative regulation.

(2) The following land uses shall apply under this administrative regulation:

(a) Cropland;

(b) Pastureland;

(c) Forest land;

(d) Residential;

(e) Industrial/commercial;

(f) Recreation;

(g) Fish and wildlife;

(h) Developed water resources;

(i) Undeveloped land or no current use or land management.

Section 2. Premining and Postmining Land Use. (1) The premining uses of land to which the postmining land use is compared shall be those uses which the land previously supported if the land has not been previously mined. The premining land use for a specific area shall be determined based on the prevalent or dominant use, vegetative types, and features present at that area; however, more than one (1) land use can exist within a proposed permit boundary.

(2)(a) The postmining land use for land that has been previously mined, and not reclaimed in compliance with 405 KAR [~~Chapter 1 or 3 or~~] Chapters 7 through 24, shall be judged on the basis of the land use that existed prior to any mining.~~[; except]~~

(b) If the land cannot be reclaimed to the land use that existed prior to any mining because of the previously mined condition, the postmining land use shall be judged on the basis of the

1 highest and best use that can be achieved which is compatible with surrounding areas and does not
2 require the disturbance of areas previously unaffected by mining.

3 (3) Prime farmland that has been historically used for cropland that is not exempted by 405
4 KAR 8:050, Section 3 shall have a postmining land use of cropland.

5 (4)(a) The land use category of "undeveloped land or no current use or land management"
6 shall not be used to designate a postmining land use.

7 (b) If the premining land use is "undeveloped land or no current use or land management",
8 and if consistent with subsection (2) of this section and Section 3 of this administrative regulation:

9 1. If trees are dominant on the area prior to mining, the area may be designated as forestland
10 for the postmining land use without compliance with the procedures and criteria for an alternative
11 post-mining land use.

12 2. For all other cases, the area may be designated as fish and wildlife for the postmining
13 land use without compliance with the procedures and criteria for an alternative postmining land
14 use.

15 (5) Slope limitations for specific postmining land uses. These limitations shall apply to
16 permits issued after the effective date of this amendment. Portions of the permit area with slopes
17 greater than twenty (20) percent (eleven and three-tenths (11.3) degrees) shall not be designated
18 as cropland, including hay production.

19 (6) Steep slope operations with variances from approximate original contour shall comply
20 with the requirements of 405 KAR 20:060, Section 3(2), and mountaintop removal operations shall
21 comply with 405 KAR 8:050, Section 4(3).

22 Section 3. Historical Land Use. If the premining use of the land was changed within five
23 (5) years of the date of application for a permit to conduct surface coal mining and reclamation

operations, the historical use of the land as well as the land use immediately preceding the date of application shall be considered in establishing the premining capability of the land to support a variety of feasible uses.

Section 4. Alternative Postmining Land Use. Higher or better alternative postmining land uses may be approved by the cabinet if the following criteria are met:

(1) There is a reasonable likelihood that the land use will be achieved;

(2) The use will not be impractical or unreasonable;

(3) The landowner or the land management agency having jurisdiction over the lands has been consulted, and the proposed alternative postmining land use is consistent with applicable land use policies and plans;

(4) The proposed use will not present an actual or probable hazard to public health or safety or threat of water pollution or diminution of water availability;

(5) The proposed use will not involve unreasonable delays in implementation; and

(6) The proposed use will not cause or contribute to violation of federal, state, or local law.

405 KAR 16:210 approved for filing.
Pages (1-4)

9/13/2019

Date

Charles G. Snavely

Charles G. Snavely, Secretary
Energy and Environment Cabinet

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 26, 2019 at 5:00 P.M. (Eastern Time) in Training Room C of the Energy and Environment Cabinet at 300 Sower Blvd, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through November 30, 2019. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michael Mullins, Regulation Coordinator, 300 Sower Blvd, Frankfort, Kentucky 40601, phone: (502) 782-6720, fax: (502) 564-4245, email: michael.mullins@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation No.: 405 KAR 16:210

Contact Person: Michael Mullins

Contact number: (502) 782-6720

Email: michael.mullins@ky.gov

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth requirements for restoring land use capability after completion of surface mining activities, and specific criteria for approval of postmining land uses which differ from the premining land use.

(b) The necessity of this administrative regulation: This administrative regulation is necessary for restoring land use capability after completion of surface mining activities, and specific criteria for approval of postmining land uses which differ from the premining land use.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 350.450 authorizes the cabinet require operators to restore land use capability after completion of surface mining activities, and specific criteria for approval of postmining land uses which differ from the premining land use. This administrative regulation conforms to the authorizing statutes by establishing those requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes requirements and criteria for completing reclamation.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment removes a citation to the interim program administrative regulations. These administrative regulations were repealed in 2018.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to remove the citations to the interim program administrative regulations, which were repealed in 2018.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the authorizing statutes by removing citations to the interim program administrative regulations. This provides the regulated entity correct citations to the permanent program administrative regulations.

(d) How the amendment will assist in the effective administration of the statutes: KRS 350.450 conforms to the authorizing statutes by requiring operators to restore land use capability after completion of surface mining activities, and specific criteria for approval of

postmining land uses which differ from the premining land use. These amendments remove incorrect citations to the interim program administrative regulations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment would apply to any entity that operates a surface coal mine within Kentucky. There are approximately 104 licensed surface mines in the Commonwealth.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities listed in question (3) above will no longer have incorrect references to the interim program administrative regulations in this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is not a cost increase associated with the proposed amendments.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities listed in (3) will simply have correct citations in this administrative regulation.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There will be no costs to the department associated with implementation of this amendment.

(b) On a continuing basis: There will be no costs to the department associated with implementation of this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funding for implementation of the amendments to this administrative regulation will be a combination of general funds and restricted funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The amendments to this administrative regulation will not require an increase in fees or funding.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish or increase any fees.

(9) TIERING: Is tiering applied? (Explain why or why not) No. All entities that operate a surface coal mine will be required to meet the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Administrative Regulation No.: 405 KAR 16:210
Contact Person: Michael Mullins, Reg. Coordinator

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1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Division of Mine Permits and the Division of Mine Reclamation and Enforcement.
2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 350.020, 350.028, 350.465, 30 C.F.R. Parts 730-733, 735, 816.133, 917, 30 U.S.C. 1253, 1255, 1265.
3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.
 - (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amended administrative regulation will not generate any new revenue for the state or local government.
 - (b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amended administrative regulation will not generate revenue in subsequent years.
 - (c) How much will it cost to administer this program for the first year? There will not be a cost increase associated with the amendments to this administrative regulation.
 - (d) How much will it cost to administer this program for subsequent years? Future costs would remain essentially unchanged related to this amendment.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):	There is no known effect on current revenues.
Expenditures (+/-):	There is no known effect on current expenditures.
Other Explanation:	There is no further explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

Administrative Regulation No.: 405 KAR 16:210
Contact Person: Michael Mullins, Reg. Coordinator

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1. Federal statute or regulation constituting the federal mandate. 30 C.F. R. 816.133.
2. State Compliance Standards. KRS 350.450.
3. Minimum or uniform standards contained in the federal mandate. The C.F.R. citations listed above set the minimum information related to postmining land use.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This amendment will not make the administrative regulation more stringent than the corresponding federal regulation.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. NA

